

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs May 23, 2023, at Knoxville

STATE OF TENNESSEE v. CODY LEE WILSON

**Appeal from the Circuit Court for Robertson County
No. 74CC2-2019-CR-640 William R. Goodman, III, Judge**

No. M2022-00864-CCA-R3-CD

The defendant, Cody Lee Wilson, appeals his Robertson County Circuit Court jury convictions of sexual battery, rape, and two counts of incest, challenging the sufficiency of the evidence supporting his convictions. Discerning no error, we affirm.

Tenn. R. App. P. 3; Judgments of the Circuit Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR. and J. ROSS DYER, JJ., joined.

Steven W. Duncan, Jr., Springfield, Tennessee (on appeal), and Alexa Spata, Clarksville, Tennessee (at trial), for the appellant, Cody Lee Wilson.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Senior Assistant Attorney General; Robert J. Nash, District Attorney General; and Jason White and Kayla Browning, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The Robertson County Grand Jury charged the defendant with two counts of rape and two counts of incest for acts committed against his 13-year-old half-sister on July 18, 2019, when the defendant was 22 years old.

According to the evidence presented during the November 2020 trial, the victim lived in a three-story house with her parents and her 15-year-old brother (“the victim’s brother”). A few months prior to the incident, the defendant, who was the son of the victim’s father through a prior marriage, moved into the home. The victim and the victim’s brother each slept in their respective bedrooms in the furnished basement, and the

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defendant slept on a couch in the basement. The second floor was the main floor where the kitchen, the living room, the dining room, and a bathroom were located. The bedroom and bathroom of the victim's parents were located on the third floor.

On the evening of July 18, 2019, the victim's mother surprised the victim's father with an overnight trip to Nashville to attend a function related to her employment. The victim's father called the defendant, who was on his way home from work, and informed him of the trip. Both of the victim's parents testified that they were unaware of any issues between the victim, the victim's brother, and the defendant prior to that night, and the victim's parents felt comfortable leaving them alone at the home for one night.

The victim testified that after the defendant returned home from work, she and the defendant went to a store where he purchased alcohol. The defendant allowed the victim to choose a flavor of alcoholic beverage to purchase, and the victim chose "Blue Raz." The defendant purchased "a case" of "Blue Raz" and "a case" of an orange-flavored alcoholic beverage. When they returned home, the defendant gave one bottle of each flavor to the victim's brother, who was playing video games in his bedroom. The defendant and the victim sat outside on the deck and drank alcohol.

The victim testified that she drank approximately four and one-half bottles of the alcoholic beverage. She stated that she had never drank an entire bottle of alcohol prior to that evening and that she had last drunk alcohol at the age of five when she took a drink of a beverage that she mistakenly believed was Pepsi. She said that the defendant stopped drinking after two or three bottles but that he encouraged her to continue drinking. She stated that they both "chugged" a drink and acknowledged that it may have been both of their ideas to do so. She stopped "chugging" once she began feeling the effects of the alcohol. She explained that the alcohol was "working a little bit" but did not "work to the point to where I don't remember everything. Only to where I don't remember a little bit."

The victim and the defendant entered their home where they "play wrestl[ed]" with the dog on the main floor while the victim's brother remained in his bedroom. At one point, the defendant grabbed the victim's buttocks, which the victim believed was accidental. The victim subsequently vomited "[a] little bit" in the bathroom and laid down on the couch. She went to the basement, knocked on her brother's bedroom door, and told him "something" about the defendant. The victim's brother instructed her to go into her bedroom and lock the door. She complied until she realized that she had left her cell phone upstairs, and she searched but was unable to locate it.

The victim testified that she went upstairs to her parents' bedroom and laid down on their bed. A light outside the bedroom was on, providing some light inside the bedroom. While she was lying on the bed, the defendant entered the room and jumped on

the bed. The victim recalled that the defendant spoke to her, but she was unable to recall what the defendant said. She testified that the defendant pulled off her shorts and began “licking” her vagina and that she did not give him permission to do so. She agreed that she “froze up” and believed she “blacked out for a second.” She believed the defendant remained clothed. The victim’s brother came upstairs, turned on the lights, saw the defendant, and stated, “[Y]ou f***ed up, dude.” The defendant jumped up and fled, and the victim believed he hid “somewhere inside or ran outside.” The victim’s brother ran downstairs and retrieved a baseball bat.

The victim’s brother instructed her to take a shower, and the victim went to the bathroom on the main floor and took a shower, which lasted a “couple of minutes.” The victim testified that after she dressed and as she was drying her hair, she heard someone knock on the bathroom door. She asked who was at the door, but she received no response. Believing that the victim’s brother was knocking, she opened the door, and the defendant “kind of” forcibly pushed open the door. The victim stated that “my pants end up on the ground and then I get pushed over by the counter.” She heard the defendant unzip his pants after which the defendant inserted his penis in her anal or vaginal cavity without her consent. The victim was unsure which of the two cavities that the defendant penetrated. She stated that the defendant pressed his body against her “over and over again” and asked, “Do you like that?” The victim did not respond.

The defendant stopped once he heard the victim’s brother talking on his cell phone near the bathroom and stating, “I’m going to kill that mother f***er if I see him again.” The defendant pulled up his pants and fled through the bathroom window. The victim was “pretty sure” that the defendant busted through the window screen and broke a planter that was hanging outside the window. The victim laid on the floor in the dining room, crying and repeating that “he raped me.” She said her brother ran into the bathroom and then ran outside to search for the defendant. After the police arrived, the victim was taken to the hospital where she was examined. She underwent a forensic interview a few days later.

During cross-examination, the victim agreed that the defendant did not force her to drink alcohol and that her memory of the night of the incident was not “completely perfect.” She stated that the defendant touched her buttocks twice, once while they were outside, which she did not believe was accidental, and once while they were playing with the dog inside the house, which she believed was accidental. She did not believe she reported to the police officers on the night of the incident that the defendant touched her buttocks while they were outside, explaining that she was still in shock. She also did not mention it to child advocacy officials because she did not believe “that part was necessary,” she did not “really want to go into detail,” and she was still “in shock” in that her “mind was all jumbled up.”

The victim testified that while lying on her parents' bed, she recalled "seeing black" but was "able to hear." She said she did not push the defendant away because she felt as if she could not move. She stated that the incident in the bathroom lasted for one to three minutes and that she did not yell for her brother because he was outside.

During redirect examination, the victim testified that she forgot to mention that the defendant also put his penis into her mouth while in her parents' bedroom. She later testified that "[w]eird stuff" came out of his penis and into her mouth. The victim was "pretty sure" that she provided this information to the officials from Our Kids Center and explained that "[t]here are a couple of details that I felt really awkward about and really frustrated about because it was stressing me out really easily that day." The victim stated that she was "pretty sure" that the defendant "put his head" in the area around her vagina twice, once before inserting his penis into her mouth and once afterwards. She stated that she did not consent to the defendant's actions.

The victim testified that during the incident in the bathroom, she was "in shock" and "kind of frozen in place." She agreed that the defendant, who was stronger than she, pulled her over to the counter, forced her up against the cabinet, and penetrated her from behind. She stated that she did not consent to the defendant's actions.

The victim's brother testified that on the evening of July 18, the defendant was intoxicated when he returned home from work. At one point, the victim's brother, who was in his bedroom, heard the dog barking and went upstairs to investigate. He entered his parents' bedroom, turned on the lights, and saw the victim and the defendant lying on the bed. The victim's brother stated that neither the victim nor the defendant were wearing clothes and that the defendant was lying on top of the victim and was "trying to basically like have sex with her." The victim's brother said that he quickly turned off the lights and did not see any "sexual contact." The victim's brother stated, "[W]hat the f*** man?" The defendant responded, "[Y]eah, I f***ed up." The victim's brother said the defendant walked downstairs, retrieved some of his belongings, and left.

The victim's brother instructed the victim to take a shower. While the victim was in the bathroom, her brother went to his bedroom to retrieve his cell phone and a baseball bat, and he estimated that he was in his bedroom for 30 seconds to one minute. The victim's brother called his parents and 9-1-1. The victim's brother waited for the police to arrive while the victim was taking a shower. At one point, the victim's brother saw the defendant on the back porch and believed the defendant was attempting to reenter the house. The victim's brother noted that the entryways on the back porch led to the kitchen and dining room and that the bathroom where the victim was showering could be reached from the back porch in "a couple of seconds."

During cross-examination, the victim's brother testified that earlier in the evening, the defendant gave him alcohol. The victim's brother drank two bottles of flavored Smirnoff beverages. He stated that he did "[n]ot really" feel the effects of the alcohol, explaining, "I felt sober. I didn't really drink anything."

The victim's brother recalled that earlier in the evening, the victim told him that the defendant touched her buttocks, and the victim's brother acknowledged that, during a prior interview, he failed to mention the victim's statement. When he walked upstairs to the third floor, no lights were on, and the door to his parents' bedroom was open. He stated that once he turned on the lights in his parents' bedroom, he saw the defendant, who was not wearing pants, lying on top of the victim. The victim's brother then turned off the lights. The victim's brother denied telling officers that he could see the defendant penetrating the victim and agreed that he stated in an interview a few days later that he did not see what was occurring.

The victim's brother agreed that he saw the defendant exit the house after which the victim's brother locked all of the doors. The victim's brother testified that after locking the doors, he saw the defendant on the back porch. The victim's brother stated that until officers arrived, he remained on the main floor of the house and acknowledged that the bathroom door was within his view.

During redirect examination, the victim's brother testified that earlier in the evening, the victim told him that the defendant was following her and that the victim appeared to be afraid. The victim's brother stated that as a result, "I kind of already knew something was up." He said he went upstairs because he "kind of thought [the defendant] was trying to do something with [the victim]." After the victim's brother caught the defendant with the victim, the defendant put on his clothes, walked downstairs, and retrieved his belongings. The victim's brother remained with the victim, who was upset and crying. The victim's brother said he had never seen the victim so upset.

The victim's brother was unsure whether he locked the doors before or after he retrieved his cell phone and baseball bat. While he was talking to his mother over his cell phone, he saw the defendant on the back porch. The defendant was looking through a window as if he wanted to retrieve something from inside the house. The defendant then stepped off the porch.

The victim's mother testified that while she and the victim's father were at a restaurant in Nashville, she received a call from the victim's brother, who was "irate," "hysterical," and "freaking out." The victim's brother stated that while searching for the victim, he went upstairs to the third floor where the lights were out and the bedroom door

was shut. He stated that when he opened the door and turned on the lights, he found the defendant on top of the victim. The victim's brother did not provide any other details, but he stated that he had a baseball bat and threatened to kill the defendant. The victim's brother said he had not yet called the police. The victim's mother instructed him to find the victim, and once the call ended, the victim's mother called the police.

The victim's parents arrived home within 35 minutes, and officers were already at the home. The victim's mother testified that the victim was crying, "hysterical," and "delirious." At approximately 11:00 p.m., the victim's mother received a text message from the defendant stating that he was sorry for what he had done and that they would never see him again. The victim's mother was "so irate" that she could not recall whether she responded to the defendant's text message. The victim was transported by ambulance to Vanderbilt Children's Hospital where she was examined. They remained at the hospital until approximately 5:00 a.m. The victim and her brother were interviewed a few days later on July 23, 2019. The victim's mother stated that neither the victim nor her brother had any motive to lie about the defendant. She said that her children had "looked up" to the defendant and had been excited for him to live with them.

The victim's mother testified that when she and the victim's father left for Nashville, a screen was on the bathroom window and that the planter attached to the window ledge was not bent. She did not notice the condition of the bathroom window and the planter upon returning from Nashville on the night of the incident because it was too dark outside. When watering her flowers on the following day, she saw that the planter was "barely hanging onto the window." She found the window screen on the ground and discarded the screen because it was bent.

The victim's father testified that when he and the victim's mother arrived home, the victim was "uncontrollably crying. I couldn't even talk to her." He stated that the victim's brother was "pretty upset and angry." The victim's father had never seen the victim or her brother so upset. The victim's father and a police officer accompanied the victim in an ambulance to the hospital. He stated that the victim "wasn't very talkative. She was really quiet and you could tell she was really upset." The victim's father testified that in July 2019, there were no issues between the defendant, the victim, and the victim's brother and that there was no reason that the victim and the victim's brother would have lied about the allegations.

The victim's father stated that on the following day, he found that the screen to the bathroom window was lying underneath the window and that a planter that hung on the window sill was "pushed down a little bit." He said he straightened the planter and attached the screen to the window. He noted that when he and the victim's mother left for Nashville on July 18, the screen and the planter were "fine."

The victim's father said he had telephone conversations with the defendant on October 19, October 23, and October 27, 2020, shortly before trial. During cross-examination, the victim's father testified that during some conversations, the defendant maintained that he did not rape the victim and that during other conversations, "it seem[ed] like he d[id] it." The victim's father stated that they never discussed whether the defendant believed the victim consented, but the victim's father acknowledged that during the October 27 call, the defendant said, "I'm not saying it didn't happen, but I didn't rape nobody." The victim's father testified that the defendant "has lied to me so many times over the years and it is hard for me to believe anything he has to say."

Lieutenant Brandon Jewell of the Robertson County Sheriff's Office ("RCSO") testified that on July 18, 2019, at approximately 8:00 p.m., he received a call regarding a sexual assault that had just occurred and responded to the victim's home. Upon arriving, he was met at the front door by the victim's brother, who was "upset, anxious." The victim's brother reported that the defendant had just left the home. In response to questioning, the victim's brother stated that he did not believe that the defendant possessed any firearms and that the firearms were kept in a garage next to the house. The door to the garage was open, which the victim's brother reported was unusual. Lieutenant Jewell focused on the garage due to the possibility that the defendant was inside the garage. Once other officers arrived, they searched the garage but did not locate the defendant.

Lieutenant Jewell testified that he again spoke to the victim's brother, whose demeanor had not changed. The victim's brother reported that he went upstairs to check on the victim and found the defendant on top of her. When asked whether the defendant was raping her, the victim's brother stated, "[Y]es." The victim's brother also affirmed that the defendant was inside the victim.

Lieutenant Jewell testified that during one of his initial conversations with the victim's brother, he learned that the victim was taking a shower and instructed the victim's brother to get the victim out of the shower. Lieutenant Jewell explained that a shower could destroy evidence of a sexual assault. He subsequently entered the house and spoke to the victim, who was crying and upset. He stated that the victim appeared to have consumed alcohol and that he recalled seeing bottles of what appeared to be Smirnoff at the home.

On the night of the incident, officers searched for the defendant in a one to two-mile area around the home for approximately eight hours. However, they were unable to locate him during that evening. The defendant was apprehended approximately two weeks later.

During cross-examination, Lieutenant Jewell testified that he did not observe any screens from windows were missing or otherwise damaged.

During the early morning hours of July 19, 2019, Denise Alexander, a social worker with Our Kids Center, and Holly Gallion, a nurse practitioner and the clinical director of Our Kids Center, met with the victim and her mother at Vanderbilt Children's Hospital. Ms. Alexander obtained information from the victim about the events to determine the type of examination required. Ms. Alexander testified that the victim was "friendly and cooperative" but "really tired." The victim stated that rather than providing the details of the incident, she preferred to identify the areas where she was touched.

Ms. Alexander testified that the victim reported that the defendant inserted his fingers into her vaginal area once, "licked" her vaginal area once, and inserted his penis into her mouth, during which "something came out" that was "goopy and really weird." The victim also reported that the defendant inserted his penis in either her anal cavity or her vagina. She was unsure which cavity in which the defendant inserted his penis. Ms. Alexander explained that such confusion is fairly common with sexually abused children who are not otherwise sexually active. The victim also reported that the defendant grabbed her arm, bit the nipple area of both of her breasts, and kissed her on her mouth.

When Ms. Alexander asked the victim whether similar acts had previously occurred, the victim looked down and avoided eye contact. Ms. Alexander then asked the victim whether the defendant had touched her or otherwise made her feel uncomfortable on prior occasions. The victim responded that "one time when he was drunk, he grabbed my butt" after which he apologized as if it was accidental but that he "did it again." When Ms. Alexander requested clarification, the victim stated that the first incident of the defendant's grabbing her buttocks occurred "this year" and that the second incident occurred earlier during the evening of July 18.

Holly Gallion testified that she decided to perform a medical evaluation of the victim based upon the history obtained from Ms. Alexander. Ms. Gallion performed a "general head-to-toe" examination of the victim and found no injuries or trauma to the victim's vaginal or anal areas. She explained that the "vast majority of girls" who report sexual penetration do not sustain injuries in their vaginal or anal areas. She testified that on a "somewhat regular basis" she encountered teenage sexual assault victims who were unsure whether they experienced vaginal or anal penetration. She explained that factors leading to their confusion included the "level of stress at that moment," "their understanding of anatomy," and "their understanding of what's happening to them and being able to process all of that at one time." Ms. Gallion collected swabs of various areas of the victim's body to submit for DNA testing.

During cross-examination, Ms. Gallion testified that she received information that the victim had been given alcohol and that a blood test conducted by the hospital indicated that alcohol was in the victim's system. She stated that she did not observe any bruising on the victim's body. During redirect examination, Ms. Gallion explained that such injuries generally do not occur when the sexual abuse victim is a child because children do not fight back or resist, especially when the abuser is someone who the child knows and loves.

Dr. Laura Boos with the forensic biology unit of the Tennessee Bureau of Investigation ("TBI") tested some of the swabs from the rape kit. She testified that the oral swab from the victim was negative for the presence of sperm and semen. She was able to identify sperm cells from one of the victim's vaginal swabs. She determined that the DNA profile obtained from the sperms cells belonged to the defendant. Dr. Boos testified that "[t]he likelihood that someone else at random on the planet would have that same profile is one in a number greater than the world's population." Once Dr. Boos found the sperm cells on one of the victim's vaginal swabs, she did not test the remaining swabs in the rape kit. A private laboratory tested swabs from the defendant, the victim, and the victim's father, and the results established that the victim's father was the biological father of both the defendant and the victim.

RCSO Detective Terry Morris interviewed the defendant, who waived his rights and agreed to speak to him. The video recording of the interview was entered as an exhibit and played for the jury at trial. The defendant told Detective Morris that he began drinking beer at approximately noon on the day of the incident while he was still at work. He stated that when he arrived home from work, the victim and her brother were there and that the victim's parents had left for Nashville. The defendant said that he learned that the victim's brother drank the defendant's alcoholic beverages stored at the home, so the defendant went to a store and purchased more alcohol. The defendant acknowledged that the victim accompanied him to the store, but he maintained that he purchased the alcohol for himself.

The defendant stated that he continued drinking alcohol once he returned home. He maintained that he had no memory of what occurred until he later awoke inside a barn. He said that he did not recall giving alcohol to the victim or seeing her drink alcohol that evening. He stated that he eluded the police because he did not know "what [he] was facing." According to the defendant, when he awoke inside a barn, he discovered text messages on his cell phone from multiple people who were angry at him. He stated that according to the information on his cell phone, he sent a text message to the victim's mother stating, "I don't know what I have done," and apologizing. The victim's mother responded via text message, threatening to "kick [his] a**."

Detective Morris testified that he also went to the home on the night of the incident. He did not observe any damage to a window screen or a planter that evening. He explained that at the time, he was unaware that the defendant had escaped through a window. Detective Morris did not learn of the means by which the defendant had escaped until the victim's forensic interview.

During cross-examination, Detective Morris disagreed that the defendant's speech was "slurred" during the interview and stated that the defendant appeared "timid." Detective Morris acknowledged the possibility that the defendant had drugs in his system or was experiencing symptoms of withdrawal, either of which could have affected his memory. Detective Morris agreed that the defendant stated that he was "hurting for" drugs.

The State rested. After a *Momon* colloquy, the defendant elected not to testify. The State elected the act of cunnilingus that occurred in the upstairs bedroom as the basis for the rape and incest charges in Counts 1 and 2. The State elected the anal or vaginal penetration that occurred in the bathroom as the basis for the rape and incest charges in Counts 3 and 4.

The jury convicted the defendant of sexual battery as a lesser-included offense of rape as charged in Count 1, rape, and two counts of incest. Following a sentencing hearing on March 19, 2021, the trial court imposed an effective 10-year sentence to be served in confinement. The defendant filed a timely motion for new trial. The trial court allowed trial counsel to withdraw and appointed appellate counsel to represent the defendant, after which the defendant filed an amended motion for new trial. Following a hearing, the trial court entered an order on June 5, 2022, denying the defendant's motion for new trial. The defendant filed a timely notice of appeal.

On appeal, the defendant contends that the evidence is insufficient to support his convictions. He maintains that the victim's testimony was unreliable and was contradicted by other evidence presented at trial. The State argues that the evidence is sufficient to support the defendant's convictions.

Sufficient evidence exists to support a conviction if, after considering the evidence—both direct and circumstantial—in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(c); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011). This court will neither re-weigh the evidence nor substitute its inferences for those drawn by the trier of fact. *Dorantes*, 331 S.W.3d at 379. The verdict of the jury resolves any questions concerning the credibility of the witnesses, the weight and value of the evidence, and the factual issues raised by the evidence. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Significantly, this court

must afford the State the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Id.*

As applicable to the present case, rape is the “unlawful sexual penetration of a victim by the defendant or of the defendant by a victim” where “[t]he sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent[.]” T.C.A. § 39-13-503(a)(2). Sexual battery is “unlawful sexual contact with a victim by the defendant or the defendant by a victim” where “[t]he sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent[.]” *Id.* § 39-13-505(a)(2). “A person commits incest who engages in sexual penetration . . . with a person, knowing the person to be, without regard to legitimacy[,] . . . [t]he person’s brother or sister of the whole or half-blood or by adoption.” *Id.* § 39-15-302(a)(2).

The evidence, when viewed in the light most favorable to the State, established that while the victim’s parents were out of town, the defendant, who was the victim’s half-brother, gave the victim alcohol, and the victim became intoxicated. As the victim was lying down on her parents’ bed, the defendant entered the bedroom, removed the victim’s shorts, and licked her vagina. The victim’s brother entered the bedroom and saw the defendant and the victim, neither of whom were wearing clothes, on the bed with the defendant on top of the victim. The victim’s brother confronted the defendant, who said that he “f***ed up” and fled from the bedroom. The victim’s brother instructed the victim to take a shower, and he went to his bedroom in the basement to retrieve his cell phone and a baseball bat.

After the victim showered, she heard someone knock on the bathroom door. Believing that her brother was at the door, she opened the door, and the defendant entered the bathroom. The defendant pushed the victim against the counter, removed his pants and her shorts, and penetrated her either vaginally or anally. Once the defendant heard the victim’s brother talking on his cell phone and threatening to kill him, the defendant fled through the bathroom window. The victim testified that she did not consent to the defendant’s actions in the bedroom and the bathroom.

After the police arrived, the victim was transported to a hospital by ambulance. She reported the areas where the defendant touched her to Ms. Alexander, a social worker with Our Kids Center. Swabs were taken and tested, and the defendant’s sperm was determined to be on one of the victim’s vaginal swabs. On the day after the incidents occurred, the victim’s parents discovered that a planter that hung outside on the

ledge of the bathroom window was damaged, and the window screen was no longer attached.

The defendant contends that the victim's testimony at trial contradicts her testimony during the preliminary hearing and that her trial testimony was not corroborated by other evidence presented at trial. The defendant maintains that, as a result, the victim's trial testimony and her testimony during the preliminary hearing cancel each other.

Tennessee courts have recognized that "contradictory [sworn] statements made by a witness as to the same fact can cancel each other out." *State v. Caldwell*, 977 S.W.2d 110, 118 (Tenn. Crim. App. 1997) (citing *Taylor v. Nashville Banner Publ'g. Co.*, 573 S.W.2d 476, 482 (Tenn. Ct. App. 1978)). The rule of cancellation "addresses circumstances in which 'the proof of a fact lies wholly with one witness, and he both affirms and denies it,' resulting in no 'evidence at all to prove the fact.'" *State v. Doyle Wayne Mason, Jr.*, No. E2019-00174-CCA-R3-CD, 2020 WL 5015903, at *25 (Tenn. Crim. App., Knoxville, Aug. 25, 2020) (quoting *State v. Matthews*, 888 S.W.2d 446, 449-50 (Tenn. Crim. App. 1993)). "However, this rule applies only when inconsistency in a witness's testimony is unexplained and when neither version of his testimony is corroborated by other evidence." *Caldwell*, 977 S.W.2d at 118. This court will disregard testimony only "if it is so indefinite, contradictory or unreliable that it would be unsafe to rest a conviction thereon." *Letner v. State*, 512 S.W.2d 643, 649 (Tenn. Crim. App. 1974) (quoting 23 C.J.S. Criminal Law § 903).

The transcript of the preliminary hearing reflects that the victim's testimony during the preliminary hearing regarding the circumstances upon which the defendant's convictions were based was consistent with the victim's trial testimony. During both the preliminary hearing and at trial, the victim testified that the defendant licked her vagina while in her parents' bedroom and penetrated her either vaginally or anally while in the bathroom. Although the victim testified at trial regarding additional acts of sexual penetration and sexual contact by the defendant while in her parents' bedroom, Ms. Alexander's testimony regarding the areas in which the victim reported the defendant touched her was consistent with the victim's trial testimony. Furthermore, the victim's testimony at trial regarding the circumstances upon which the convictions were based was corroborated by other evidence presented at trial, including her brother's testimony of his observations and the defendant's statement in the bedroom, the presence of the defendant's sperm on a vaginal swab from the victim, her parents' testimony regarding the condition of the planter and the screen from the bathroom window that they discovered on the following day, and the defendant's text message to the victim's mother on the night of the offenses. Therefore, we conclude that the rule of cancellation does not apply in this case.

The defendant also identifies various inconsistencies in the testimony of the witnesses and challenges the credibility of the victim and her brother. However, it is the province of the jury to evaluate the credibility of witnesses, determine the weight to be given to witnesses' testimony, and reconcile all conflicts in the evidence. *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008) (citing *Byrge v. State*, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). This court may not second-guess the credibility and factual determinations made by the jury as the trier of fact. Rather, we conclude that the evidence, when viewed in the light most favorable to the State, is sufficient to support the convictions.

For the foregoing reasons, we affirm the judgments of the trial court.

JAMES CURWOOD WITT, JR., JUDGE